
DOES EVERY DOG REALLY HAVE ITS DAY?: A CLOSER LOOK AT THE INEQUITY OF IOWA’S BREED-SPECIFIC LEGISLATION

ABSTRACT

That dog is man’s best friend is undeniable; that man is dog’s best friend, or even his advocate, is not as clear. The relationship between man and beast has largely been a fickle one, with attitudes toward canines ranging from familial devotion to consummate fear depending on personal experience, social climate, and the breed of the dog. Breed, more than anything else, plays an unfortunately large role in how a dog is perceived by people and ultimately how it is treated. Stigmas dogging breeds, such as pit bulls, have become so ubiquitous that legislatures have begun to craft laws targeting and singling out entire breeds based on the actions of a handful.

Breed-specific laws are well intentioned, but the fear and urgency driving their enactment has led to questionable craftsmanship by lawmaking bodies. These quick-fix statutes and ordinances have resulted in a variety of unintended negative side effects that far outweigh the laws’ utilities, yet these discriminatory and ineffective laws remain in place in the municipal codes of numerous Iowa communities. This Note proposes a reform to Iowa’s existing breed-specific legislation which would eliminate the inequalities of the current laws and preserve the power of municipalities to remedy public safety concerns.

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I. INTRODUCTION

Breed-specific legislation (BSL) is a law or ordinance that restricts the ownership and possession of dogs of specific breeds, with the brunt of this legislation aimed at deterring ownership of pit bulls.¹ These laws range from a simple licensing fee for ownership to outright bans with euthanasia of the dog as a result of noncompliance.² While targeting one breed perceived as more dangerous than others may seem like a valid legislative response to a public safety concern, this Note argues BSL is not the best cure. The rationales behind BSL are based on scientifically unsubstantiated myths, and the laws themselves are virtually impossible to enforce with any semblance of uniformity.³

Part II of this Note explains the historical and social beginnings of this breed-discriminatory phenomenon across the United States, as well as how it has taken root in Iowa’s statutes and municipal codes. Part III identifies the numerous policy concerns associated with this type of legislation. Part IV examines the constitutional challenges leveled against BSL. Part V reviews national and local efforts to reverse BSL. Finally, Part VI proposes

1. *Breed-Specific Legislation FAQ*, NAT’L CANINE RES. CTR., <https://www.nationalcanineresearchcouncil.com/public-policy/breed-specific-legislation-faq> (last visited Sept. 26, 2018) (discussing other breeds also affected by this legislation); see also, e.g., *Breed Specific Legislation*, ASPCA, <https://www.aspc.org/animal-cruelty/dogfighting/what-breed-specific-legislation> (last visited Sept. 26, 2018) (discussing how various types of “pit” dogs are usually the targets of such legislation).

2. See *infra* notes 28, 32–33 and accompanying text.

3. See *infra* Parts III.A, III.B.

a reform for state and municipal lawmaking bodies in Iowa to improve this otherwise arbitrary legislation.

II. THE HISTORY OF BREED-SPECIFIC LEGISLATION

While the breeds categorized as pit bulls⁴ are currently those most targeted by discriminatory laws, they are not the first to take the top spot as the most-feared canine and likely will not be the last.⁵ Unlucky breeds associated with a given political or social happening suffer negative stereotypes and breed misidentification over time.⁶ In pre-Civil War southern states, canines used for locating escaped slaves were bred and trained to show aggressiveness toward humans for that very purpose.⁷ These various breeds of dogs became collectively known as “bloodhounds,” and their reputation for aggression followed them for much of the nineteenth century.⁸ Similarly, the association of German shepherds and Doberman pinschers with mid-twenty-first century Nazi Germany sealed their temporary fate as a breed perceived to be exceptionally vicious.⁹ Post-World War II, the fear caused by media sensationalism of relatively infrequent dog attacks bounced from breed to breed, eventually gripping pit bulls in the 1980s.¹⁰

A. How Did Pit Bulls Get Such a Bad Rap?

The breed of dogs commonly referred to as “pit bulls” today traces its lineage to canines used for bull-baiting and bear-baiting in early 1800s England.¹¹ For amusement of the wealthy class—and under the illusion that

4. See, e.g., *infra* note 15 and accompanying text for an explanation of which breeds are regularly categorized as pit bulls.

5. See Sabrina DeFabritiis, *Fido's Fallacy*, 9 ALB. GOV'T L. REV. 168, 174 (2016) (detailing how in the 1960s, the Doberman pinscher was the archetypical dangerous dog, while in the 1970s that role was overtaken by the German shepherd).

6. Ann L. Schiavone, *Barking Up the Wrong Tree: Regulating Fear, Not Risk*, 22 ANIMAL L. 9, 20–21 (2015) (“Throughout the nineteenth and twentieth centuries, a parade of dog breeds have vied for the title of most ‘vicious’ or ‘dangerous.’”).

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. Kristin E. Swann, Note, *Irrationality Unleashed: The Pitfalls of Breed-Specific Legislation*, 78 UMKC L. REV. 839, 840–41 (2010). The name *pit bull*, accordingly, is a result of their baiting of these animals in pits. DAWN M. CAPP, AMERICAN PIT BULL TERRIERS: FACT OR FICTION 9 (2004).

an animal's meat would become more tender if it were tortured before death—bulldogs were placed into rings or pits with bulls, tearing off pieces of the bull's flesh until the dog's eventual death.¹² While the upper-class enjoyed this trend, some lower-class English citizens were prohibited from owning bulldogs and instead kept smaller, more agile terriers as pets to help control and eliminate vermin.¹³ Upon the outlaw of baiting sports, dog fighting gained popularity as a “gentleman's sport,” and breeders crossed the bulldog and terrier, propagating features such as quickness, stamina, and dog-targeted aggression.¹⁴ As iterations of this cross developed over time, breeds such as the American pit bull terrier, Staffordshire bull terrier, and American Staffordshire terrier came to be known collectively as pit bulls.¹⁵

Due to their historical involvement in gruesome baiting and fighting sports, these breeds have developed a trait, for which they have become very well-known, called “gameness,” defined as the “unflagging courage and determination not to quit, even in the face of extreme pain and injury.”¹⁶ Breeders and owners during the baiting and fighting eras saw this characteristic as a positive one,¹⁷ but gameness now forms the foundation of the negative stereotypes associated with these breeds today. This fear of a pit bull's gameness, however, is misplaced; the centuries of breeding and fighting that resulted in pit bulls' gameness also resulted in pit bulls becoming “one of the most people-stable dogs in existence.”¹⁸ While encouraged to attack and destroy animals and other dogs in pits and cages, pit bulls have historically been bred specifically not to demonstrate this trait toward humans.¹⁹ The format of dog fighting necessitated human intervention at certain points, so aggression toward referees and handlers present in the fighting forums was not tolerated.²⁰

12. CAPP, *supra* note 11, at 9–10.

13. *See id.* at 10.

14. Swann, *supra* note 11, at 841.

15. Safia Gray Hussain, Note, *Attacking the Dog-Bite Epidemic: Why Breed-Specific Legislation Won't Solve the Dangerous-Dog Dilemma*, 74 *FORDHAM L. REV.* 2847, 2851–53 (2006).

16. CAPP, *supra* note 11, at 11.

17. *See* Hussain, *supra* note 15, at 2853 (noting even U.S. President Teddy Roosevelt kept a pit bull as a pet at the White House).

18. CAPP, *supra* note 11, at 11.

19. *See* Devin Burstein, *Breed Specific Legislation: Unfair Prejudice & Ineffective Policy*, 10 *ANIMAL L.* 313, 325 (2004); *see also* Hussain, *supra* note 15, at 2852–53.

20. *See* Hussain, *supra* note 15, at 2852–53.

As pit bull breeds were brought to the United States in the mid-nineteenth century, some continued to serve as fighting dogs, but others began to demonstrate their utility to westward-bound frontiersmen as farm dogs and family pets.²¹ They became increasingly known for their loyalty and friendly disposition toward humans and were kept as pets by influential twentieth century figures, such as President Theodore Roosevelt and Helen Keller.²² One pit bull, Sergeant Stubby, even enjoyed substantial military fame and was revered as a World War I hero.²³ With regard to breeding, pit bulls are modernly bred for appearance and showing, which has begun to eliminate bred behaviors.²⁴ Unfortunately, a series of high-profile pit bull attacks in the 1980s were sensationalized by newspapers and magazines, and the pit bull panic began.²⁵

One graphic story after another began to appear in the news, with the culprit always being the reckless, savage, unpredictable pit bull.²⁶ The media's tendency to misidentify, distort, and conceal the factors involved in dog attacks at the time was not surprising, but is nonetheless worthy of scrutiny. This reality is simply a function of how the media stimulates its viewership: "Normal crime is not news; only abnormal crime is. If there is no deviance, there is no story."²⁷ Because of the media's focus on rare and dramatic pit bull-human attacks, viewers were and still are more likely to irrationally fear this kind of event, rather than pay heed to the heightened statistical likelihood of being injured or killed by cattle—or even being shot to death by another human.²⁸

21. KAREN DELISE, *THE PIT BULL PLACEBO: THE MEDIA, MYTHS AND POLITICS OF CANINE AGGRESSION* 136 (2007).

22. Jamey Medlin, Note, *Pit Bull Bans and the Human Factors Affecting Canine Behavior*, 56 *DEPAUL L. REV.* 1285, 1288 (2007) (describing the breed as an "all-American" dog for the time).

23. See *id.* at 1289. Sergeant Stubby was said to have alerted troops to a gas raid and comforted injured soldiers during the attack. See also Gillian Kane, *Sergeant Stubby*, *SLATE* (May 7, 2014), http://www.slate.com/articles/news_and_politics/history/2014/05/dogs_of_war_sergeant_stubby_the_u_s_army_s_original_and_still_most_highly.html.

24. See Bronwen Dickey, *Pit Bull: What's in a Dog Breed?*, *BARK*, <http://thebark.com/content/pit-bull-whats-dog-breed> (last visited Sept. 27, 2018).

25. See, e.g., Larry Cunningham, *The Case Against Dog Breed Discrimination by Homeowners' Insurance Companies*, 11 *CONN. INS. L.J.* 1, 6 (2004).

26. DELISE, *supra* note 21, at 97–100.

27. Judy Cohen & John Richardson, *Pit Bull Panic*, 36 *J. POPULAR CULTURE* 285, 294–95 (2002).

28. Cynthia A. McNeely & Sarah A. Lindquist, *Dangerous Dog Laws: Failing to Give Man's Best Friend a Fair Shake at Justice*, 3 *J. ANIMAL L.* 99, 99–100 (2007).

In addition to—and reliant upon—media inaccuracy, a report released by the Centers for Disease Control in 1989, using shoddy statistics, solidified the role of the pit bull as a societal villain.²⁹ The statistics used in the study “were actually numbers derived largely from newspaper stories and from the media’s identification of dogs involved in attacks.”³⁰ As discussed further in Part III.A, media-induced panic is a primary source of fodder for BSL advocates. Exaggerated reports foment unwarranted fear in communities and encourage legislators to make laws based in that fear, ignorant of the various factors actually implicated in a dog attack such as owner negligence, abuse, and neglect.³¹

B. *Emergence of Breed-Specific Legislation Nationwide*

Unsurprisingly, knee-jerk legislation targeting pit bulls seemed like the best solution to this sudden public safety question for most U.S. communities:

The growth in the population of the breed mixes commonly referred to as “pit bulls,” combined with the media’s highly publicized portrayal of these dogs as aggressive fighting machines, contributed to the pit bull’s rise to infamy and resulted in a public outcry for legislation banning these types of dogs.³²

Since the 1980s, hundreds of municipal ordinances and state statutes have been passed banning or heavily regulating pit bulls.³³

29. Compare Jeffrey J. Sacks, Richard W. Sattin & Sandra E. Bonzo, *Dog Bite-Related Fatalities from 1979 Through 1988*, 262 JAMA 1489, 1492 (1989) (discussing the large percentage of deaths from dog bites purported to be caused by pit bulls, though admitting the “numbers may not be exact”), with Cunningham, *supra* note 25, at 17–20 (arguing the data relied upon in earlier studies such as the one cited above was both flawed and limited).

30. DELISE, *supra* note 21, at 99. The data was also supplied by information collected and maintained by the National Center for Health Statistics. Sacks, Sattin & Bonzo, *supra* note 29, at 1489.

31. Swann, *supra* note 11, at 855–56 (“The tendency of the media, legislators, and concerned citizens on both sides of the debate to extract only the most conspicuous figures, bypassing the critical analysis and context that give those incomplete numbers meaning, compounds the dearth of data. The result: ordinances based upon irrational generalizations about pit bulls.”).

32. DeFabritiis, *supra* note 5, at 172–73; see also Karen Delise, *National Canine Research Council Examines the Pit Bull Paparazzi: Fear vs. Fact*, PRWEB (Aug. 25, 2007), <http://www.prweb.com/releases/2007/08/prweb549276.htm>.

33. See Dana M. Campbell, *Pit Bull Bans: The State of Breed-Specific Legislation*,

One of the first known instances of legislation targeting this breed occurred in Hollywood, Florida; in 1980, municipal legislation was passed requiring owners of pit bulls to complete special registration and have a minimum \$25,000 public liability insurance policy.³⁴ As the media frenzy surrounding pit bulls grew, cities across the United States followed suit.³⁵

While the most pervasive form of BSL is the municipal ordinance, the most devastating is state-level legislation, which restricts ownership of certain breeds in any of its municipalities. During the rise of BSL in the 1980s and 1990s, most states left BSL decisions to counties and cities, but Ohio—a veritable hub of BSL-related issues³⁶—passed statewide legislation which labeled all pit bulls as vicious and held owners strictly liable for damages caused by their dogs.³⁷ Some state legislatures continue to introduce bills that would ban pit bulls statewide, but these efforts have been unsuccessful.³⁸

C. *The Current State of Breed-Specific Legislation in Iowa*

Not only does Iowa routinely rank as having some of the worst animal cruelty laws of any state,³⁹ it is one of four states with 40 or more municipalities with BSL.⁴⁰ While the city of Des Moines has strict regulations on the ownership of pit bulls, several Iowa towns have enacted laws that completely ban their possession.⁴¹ Approximately 70 communities in Iowa

GPSOLO, July/Aug. 2009, at 36, 38.

34. Lynn Marmer, Comment, *The New Breed of Municipal Dog Control Laws: Are They Constitutional?*, 53 U. CIN. L. REV. 1067, 1068 (1984).

35. Katie Barnett, *The Post-Conviction Remedy for Pit Bulls: What Today's Science Tells Us About Breed-Specific Legislation*, 67 SYRACUSE L. REV. 241, 245 (2017).

36. Ohio is unique in that it has been home to a wide variety of legislative enactments and judicial decisions regarding BSL: state-level restrictions, municipal repeals of ordinances, eventual statewide preemption, and a cornucopia of constitutional challenges. *See infra* Parts VI, V.A.

37. Schiavone, *supra* note 6, at 26.

38. *See, e.g.*, S.B. 79, 25th Leg., Reg. Sess. (Haw. 2009); H.B. 1686, 93rd Gen. Assemb., 2d Reg. Sess. (Mo. 2006).

39. ANIMAL LEGAL DEF. FUND, 2017 U.S. ANIMAL PROTECTION LAWS RANKINGS: COMPARING OVERALL STRENGTH AND COMPREHENSIVENESS 18 (2018), https://aldf.org/wp-content/uploads/2018/06/Rankings-Report-2017_FINAL-1.pdf.

40. THE HUMANE SOC'Y OF THE U.S., REPEALING BREED-SPECIFIC LEGISLATION: MOVING BEYOND BREED TO SAVE DOGS AND STRENGTHEN COMMUNITIES 10 (2016) [hereinafter HUMANE SOC'Y], <https://www.animalsheltering.org/sites/default/files/BSL%20Repeal%20Toolkit.pdf>.

41. DES MOINES, IOWA, MUN. CODE art. II, § 18-41 (2018); *see, e.g.*, OTTUMWA, IOWA, MUN. CODE § 7-113 (2018).

have full bans based on breed and about 20 have heightened restrictions for certain breeds.⁴²

Des Moines Municipal Code classifies certain breeds as “high risk”—read: “vicious”—dogs: “(6) Staffordshire terrier breed of dog; (7) The American pit bull terrier breed of dog; (8) The American Staffordshire terrier breed of dog; or (9) Any dog which has the appearance and characteristics of being predominately of the breeds of Staffordshire terrier, American pit bull terrier, American Staffordshire terrier.”⁴³ Once a dog is classified by the city of Des Moines as high risk per the ordinance’s definitions, owners are saddled with arduous regulations. The limitations imposed on owners of pit bulls in Des Moines include enclosed kennels, minimum height requirements and footing depths for confinement structures, maximum leash lengths, and ownership of liability insurance of at least \$100,000.⁴⁴ There are no such restrictions for owners of other notoriously high-risk breeds, such as German shepherds or Rottweilers.⁴⁵ It is worth mentioning that one breed listed in Des Moines’s ordinance, the Staffordshire terrier, is not actually a breed on any official registry; however, the Staffordshire bull terrier is.⁴⁶

Even more restrictive cities such as Ottumwa,⁴⁷ Sioux City,⁴⁸ and Winterset⁴⁹ make it unlawful to own, keep, transport, or sell pit bulls pursuant to their municipal code—a restriction that theoretically extends to a mere passerby with an animal deemed vicious riding in the car. Most ordinances like these contain standards similar to Des Moines’s in determining which dogs fall within its scope: any dog that “has the appearance and characteristics of being predominately” of a certain number

42. *Iowa Breed-Specific Laws*, DOGSBITE.ORG, <http://www.dogsbite.org/legislating-dangerous-dogs-iowa.php> (last updated July 30, 2017).

43. DES MOINES, IOWA, MUN. CODE art. II, § 18-41 (2018).

44. *Id.* §§ 18-44, 18-56, 18-59; *see also* Regulations Regarding Animals Defined as Vicious Under City of Des Moines Municipal Code: Compliance Form (on file with author).

45. DES MOINES, IOWA, MUN. CODE art. II, §§ 18-44, 18-56, 18-59.

46. *See* AM. KENNEL CLUB, OFFICIAL STANDARD OF THE STAFFORDSHIRE BULL TERRIER 1 (1990) [hereinafter AM. KENNEL CLUB, STAFFORDSHIRE BULL TERRIER], http://images.akc.org/pdf/breeds/standards/StaffordshireBullTerrier.pdf?_ga=1.112985796.1189736076.1479585563.

47. OTTUMWA, IOWA, MUN. CODE § 7-113 (2018).

48. SIOUX CITY, IOWA, MUN. CODE § 7.10.030 (2018).

49. WINTERSET, IOWA, MUN. CODE § 3.206 (2004).

of breeds listed in the ordinance,⁵⁰ a troubling method of identification discussed in further detail in Part III.B.

Of the municipalities with breed bans, most have written in exceptions for those owners who possessed the outlawed breed before the enactment of the ordinance.⁵¹ In Sioux City, for example, the grandfather clause allows pre-existing owners of pit bulls to retain ownership of their dogs within city limits as long as compliance with a lengthy list of requirements, similar to those of Des Moines, is met.⁵² Unfortunately for pit bulls in municipalities with BSL, if the owner is unable to comply with the often invasive and expensive regulations, a finding that an unlicensed, uninsured dog is high risk or vicious, per its ordinance, may lead to seizure, and in many instances, destruction of the dog.⁵³

III. SHAKY FOUNDATIONS AND ABOUNDING POLICY CONCERNS

Despite withstanding most constitutional attacks, the effects of BSL continue to demonstrate the unsound logic of policymakers when it comes to this issue. The inability of trained experts to correctly identify pit bulls, the lack of increase in public safety, and the unintended social side effects are some of the issues plaguing these ordinances. Most importantly, the basic foundation of these ordinances rests on a fallacy that has been perpetuated by the media throughout the years.

A. *The Myth of the Aggressive Pit Bull*

While studies reveal that pit bulls are inherently more aggressive toward other dogs due to their origins as bull-baiting and bear-baiting dogs as explained in Part II.A,⁵⁴ recent comprehensive studies suggest pit bulls do not have the bad temperaments toward humans that the media and folklore purport them to have.⁵⁵ The American Temperament Test Society developed a test to measure a dog's stability, shyness, aggressiveness, and friendliness; the test involves a simulation of a casual walk during which the

50. *Id.* § 3.201(15)(e); SIOUX CITY, IOWA, MUN. CODE § 7.10.010 (2018).

51. *See* SIOUX CITY, IOWA, MUN. CODE § 7.10.040 (2018).

52. *Id.* § 7.10.020.

53. *See* DES MOINES, IOWA, MUN. CODE art. II, § 18-59(d) (2018).

54. Hussain, *supra* note 15, at 2852–53.

55. Ledy Vankavage & Joan E. Schaffner, *Ordinances Targeting Reckless Owners and Damaged Dogs: Is Canine Profiling Effective?*, in *A LAWYER'S GUIDE TO DANGEROUS DOG ISSUES* 7, 10–12 (Joan Schaffner ed., 2009).

dog encounters friendly, neutral, and threatening situations via “visual, auditory, and tactile stimuli.”⁵⁶ All of the breeds regularly categorized as pit bulls—American Staffordshire terrier, American pit bull terrier, and Staffordshire bull terrier—consistently scored above the average pass rates of other breeds.⁵⁷ There is no evidence from the controlled study of dog bites that one kind of dog is more likely to bite a human being than another kind of dog.⁵⁸

Transmuting the dangerous tendencies of one dog to the breed as a whole overlooks the many factors that actually play a role in an individual animal’s behavior. At least five factors are responsible for any dog’s likelihood of biting: the dog’s heredity (including age and sex), health, early experiences, and later socialization and the victim’s behavior.⁵⁹ For instance, younger or male dogs are more likely to bite people than older or female dogs.⁶⁰ A well-socialized and properly trained dog is less likely to bite than a mistreated or poorly trained dog.⁶¹ Simplifying the nuances of canine behavior for the sake of clean legislation is not only ineffective but perpetuates the myth that pit bulls are more aggressive than any other breed.

Many BSL advocates rely specifically on the idea that pit bulls’ facial anatomy and breeding makes them more capable of inflicting severe wounds when provoked, even if they do not actually attack more often than other breeds.⁶² With regard to breeding, the general idea is that “the pit bull has been selectively bred to fight without provocation and to continue to fight

56. *Description of the Temperament Test*, AM. TEMPERAMENT TEST SOC’Y, <https://atts.org/tt-test-description/> (last visited Sept. 30, 2018).

57. See Vankavage & Schaffner, *supra* note 55, at 10–11. The Staffordshire bull terrier has a 90.9 percent pass rate, the American pit bull terrier has an 87.4 percent pass rate, and the American Staffordshire terrier has an 85.5 percent pass rate; the average pass rate of all breeds is 83.4 percent. Totals are cumulative and current as of April 2016. *ATTS Breed Statistics*, AM. TEMPERAMENT TEST SOC’Y, <https://atts.org/breed-statistics/statistics-page1/> (last visited Sept. 30, 2018).

58. *Dog Bite Risk and Prevention: The Role of Breed*, AM. VETERINARY MED. FOUND. (May 15, 2014), <https://www.avma.org/KB/Resources/LiteratureReviews/Pages/The-Role-of-Breed-in-Dog-Bite-Risk-and-Prevention.aspx>.

59. John C. Wright, *Canine Aggression Toward People: Bite Scenarios and Prevention*, 21 *VETERINARY CLINICS N. AM.: SMALL ANIMAL PRAC.* 299, 311 (1991).

60. *Id.* at 299–302.

61. See McNeely & Lindquist, *supra* note 28, at 107–09; see *infra* Part III.D.

62. See, e.g., Sallyanne K. Sullivan, Note, *Banning the Pit Bull: Why Breed-Specific Legislation Is Constitutional*, 13 *U. DAYTON L. REV.* 279, 282–84 (1988).

until it is near death.”⁶³ Implicit in this argument, however, is the acknowledgment that any actual or perceived heightened ability to inflict injury is due to the dog’s breeding by humans, not by its own genetic propensity to injure.⁶⁴

BSL proponents are also apt to use as ammunition the “fact” that pit bulls have unique jaws that allow them to lock shut on their victims,⁶⁵ but scientists have concluded that any such locking mechanism is an anatomical impossibility.⁶⁶ The appellate court in *City of Toledo v. Tellings* showed deference to the scientific evidence in its holding, taking note of expert testimony that the musculature and bone structure of pit bulls is comparable to other similarly sized dogs and that the origin of the locking jaw myth has its foundations in case law and law review articles, not science.⁶⁷

As mentioned briefly in Part II.B, the media’s role in public perception of pit bulls cannot be overstated. Relatively rare attacks are sensationalized and converted into national crises simply because they make for better news⁶⁸:

Media coverage of highly unusual crimes makes people fearful of risks that they are most unlikely to face. . . . Risks associated with certain breeds of dog, especially pit bulls, have been stressed to such a degree by media and other popular culture mediums that the term “pit bull” now not only means a type of dog, but is also defined as “an aggressive or tenacious” person. [These] perception[s] of pit bulls . . . as vicious or dangerous is so engrained into the American public’s consciousness that it will be very hard to ever reverse.⁶⁹

63. *Id.* at 283.

64. *See id.* at 283–84.

65. *Id.*

66. CAPP, *supra* note 11, at 83–84 (“There is absolutely no evidence for the existence of any kind of ‘locking mechanism’ unique to the structure of the jaw and/or teeth of the American Pit Bull Terrier.”); Hussain, *supra* note 15, at 2853 n.53.

67. *See City of Toledo v. Tellings*, No. L-04-1224, 2006 WL 513946, at *3, *10 (Ohio Ct. App. Mar. 3, 2006), *rev’d*, 871 N.E.2d 1152 (Ohio 2007).

68. *See, e.g., DELISE*, *supra* note 21, at 139–44; *see also Schiavone*, *supra* note 6, at 67.

69. Schiavone, *supra* note 6, at 67 (quoting CASS R. SUNSTEIN, *LAWS OF FEAR: BEYOND THE PRECAUTIONARY PRINCIPLE* 87 (2005)).

The media prompts fear; fear begets legislation; legislation is bolstered by statistics; and statistics are derived from media reports: the cycle perpetuates itself *ad infinitum*.⁷⁰

In addition to the media, an unsuspecting entity can shoulder some of the blame for the perpetuation of the myth of the aggressive pit bull: insurance companies. A 2015 release by the Insurance Information Institute states that more than one-third of homeowners' insurance claim dollars paid out were dog-bite related.⁷¹ Mirroring the legislative process, insurance companies have begun to deny—and fail to renew—homeowners insurance policies based on breed.⁷² This policy causes problems not only by reinforcing negative stereotypes about certain breeds but by acting in contravention of those states that have prohibited BSL at the state level.⁷³ Fortunately, some insurers, such as State Farm, are basing their underwriting decisions on whether a dog of any breed has bitten before, not on whether it is categorized as a certain breed.⁷⁴

70. See, e.g., *Vanater v. Village of South Point*, 717 F. Supp. 1236, 1239 (S.D. Ohio 1989) (promulgating municipal BSL after the mayor learned through “media reports and calls from concerned citizens of South Point” that pit bulls may be vicious).

71. *Dog Bites Accounted for More than One-Third of All Homeowners Liability Pay Outs Last Year as Cost per Claim Soars*, INS. INFO. INST. (May 14, 2015), <https://www.iii.org/press-release/dog-bites-accounted-for-more-than-one-third-of-all-homeowners-liability-pay-outs-last-year-as-cost-per-claim-soars-051315>.

72. See *Homeowners Insurance FAQs*, NATIONWIDE MUTUAL INS. CO., <https://www.nationwide.com/homeowners-insurance-faqs.jsp> (last visited Sept. 30, 2018); *How Much Does Homeowners Insurance Cost?*, ALLSTATE INS. CO., <https://www.allstate.com/tools-and-resources/home-insurance/how-much-is-homeowners-insurance.aspx> (last visited Sept. 30, 2018); see, e.g., Nathan Driver, *Minn. Couple Denied Insurance Quote After Adopting Pit Bull Rescue*, WDTN.COM (Aug. 26, 2015), <http://wdtn.com/news/minn-couple-denied-insurance-quote-after-adopting-pit-bull-rescue/1072873012>.

73. DeFabritiis, *supra* note 5, at 183 (noting outright insurance bans on breeds “are increasingly unreasonable in light of state bans on breed specific legislation and the social utility of pets, particularly dogs”).

74. *All Dog Breeds Deserve a Chance*, STATE FARM MUTUAL AUTOMOBILE INS. CO. (Sept. 29, 2015), <https://newsroom.statefarm.com/2015-09-29-all-dog-breeds-deserve-a-chance/#ROoYrpzetOUxs8XM.97>; see also Justin Tomczak, *Insuring the Underdog*, HUFFPOST (Aug. 31, 2015), http://www.huffingtonpost.com/justin-tomczak/insuring-the-underdog_b_8066764.html. In addition to insurers amending policies, some states, such as Pennsylvania, have prohibited insurance companies from denying coverage based on breed. 3 PA. STAT. AND CONS. STAT. ANN. § 459-507-A(d) (West 2018).

Dogs, like humans, are individuals.⁷⁵ Fatal dog attacks do occur, sometimes by pit bull breeds, but to restrict an entire breed based on the actions of a few is counterintuitive—especially when the negative perception of pit bulls is due primarily to media sensationalism and misinformation regarding canine anatomy and characteristics.⁷⁶ As one commentator notes, “[F]or every Pit bull that attacks someone, there are tens of thousands of his brethren that tolerate all the conditions humans place them in . . . without ever biting or attacking.”⁷⁷

B. A Pit Bull by Any Other Name—The Near Impossibility of Correct Visual Identification of Mixed Breeds

The rationale behind BSL is that pit bulls, as a breed, are inherently more vicious and thus need more regulation than other breeds of dogs; that is, a pit bull’s genetic makeup alone is determinative of its behavior.⁷⁸ It would follow logically that the subjection of a dog to any ordinance would require a scientific determination as to its genetic breed through DNA testing. However, BSL in Iowa, and across the country, lacks any semblance of a concrete standard to determine which dogs are or are not genetically classified as pit bulls.

In fact, an essential provision of most BSL is the decidedly unscientific method of pure visual identification of a dog’s appearance to determine its status under the law.⁷⁹ Typically, breed-specific statutes and ordinances classify as subject to the ordinance “[a]ny dog *which has the appearance and characteristics of being predominately* of the breeds of Staffordshire terrier, American pit bull terrier, American Staffordshire terrier.”⁸⁰ In plainer terms, any dog that acts or looks like it is at least 51 percent pit bull is subject to the ordinance, regardless of its true genetic makeup.⁸¹ This standard presents a myriad of problems.

75. Tomczak, *supra* note 74.

76. See, e.g., *id.*; *Media Bias and the Pit Bull*, SAVE-A-BULL RESCUE (Sept. 7, 2013), <http://saveabullmn.org/media-bias-and-the-pit-bull>.

77. DELISE, *supra* note 21, at 126.

78. DeFabritiis, *supra* note 5, at 170–71.

79. See, e.g., DES MOINES, IOWA, MUN. CODE art. II, § 18-41 (2018).

80. See *id.* (emphasis added).

81. See *id.*

One issue underlying the difficulty in visual identification of pit bulls is the fact that pit bulls are not a single, recognized breed.⁸² Most Americans would not have difficulty describing the physical characteristics associated with the canine commonly referred to as the pit bull: broad head, short ears, muscular bodies, and short, smooth hair.⁸³ Most Americans may be surprised, however, to learn that the United Kennel Club and American Kennel Club⁸⁴ do not list *pit bull* as an official breed.⁸⁵ This term is used instead to refer to the officially recognized breeds of American Staffordshire terrier, Staffordshire bull terrier, and American pit bull terrier—all of which share variations of the physical traits listed above.⁸⁶

Despite the absence of an official registry or standard for identifying pit bulls, much BSL aimed at them encompasses any dog having the “look” of a pit bull.⁸⁷ However, “[I]f the target of a ban is based on the ‘look’ of a dog alone, it is not a breed-specific law at all—breed has little to do with it.”⁸⁸ For example, a dog whose genetic makeup is 75 percent American Staffordshire terrier and 25 percent golden retriever, but whose physical characteristics lean more toward retriever—a long snout, medium to long hair, and drop ears—would not be subject to the ordinance.⁸⁹ Contrarily, a dog whose genetic makeup is 75 percent golden retriever and 25 percent American Staffordshire terrier, yet has the broad skull and short snout of a pit bull, would be subject to an ordinance despite its genetic makeup being

82. See Hussain, *supra* note 15, at 2851.

83. *Id.* at 2852.

84. The UKC and AKC are the foremost international and national dog-breed registries, respectively, which maintain standards for the physical and behavioral characteristics used in the classification of dog breeds. Koharik Arman, *A New Direction for Kennel Club Regulations and Breed Standards*, 48 CANADIAN VETERINARY J. 953, 954 (2007).

85. Hussain, *supra* note 15, at 2851.

86. *Id.*; see also AM. KENNEL CLUB, OFFICIAL STANDARD OF THE AMERICAN STAFFORDSHIRE TERRIER 1 (1936), http://images.akc.org/pdf/breeds/standards/AmericanStaffordshireTerrier.pdf?_ga=1.138578547.1189736076.1479585563; AM. KENNEL CLUB, STAFFORDSHIRE BULL TERRIER, *supra* note 46, at 1; UNITED KENNEL CLUB, AMERICAN PIT BULL TERRIER: OFFICIAL UKC BREED STANDARD 1 (2012), <http://res.ukcdogs.com/pdf/breedstandards/American%20Pit%20Bull%20Terrier.pdf>.

87. See *Visual Breed Identification*, NAT’L CANINE RES. COUNCIL, <https://www.nationalcanineresearchcouncil.com/ineffective-policies/visual-breed-identification> (last updated July 13, 2016).

88. Schiavone, *supra* note 6, at 74.

89. See Victoria L. Voith et al., *Comparison of Visual and DNA Breed Identification of Dogs and Inter-Observer Reliability*, 3 AM. J. SOC. RES. 17, 24 (2013).

predominately golden retriever.⁹⁰ As noted by a commentator: “Unless every dog in a community receives a DNA test to determine breed heritage, enforcement will necessarily be both over-inclusive and under-inclusive.”⁹¹

This incongruence between the intent of BSL and its unsuccessful coverage of pit bulls is amplified by the unreliability of using visual identification to determine which dogs fall within the scope of the statute. A 2013 study by the *American Journal of Sociological Research* confirmed that the underpinnings of BSL’s visual identification component are not as trustworthy as they seem.⁹² Nine hundred twenty-three participants—all of whom were considered for the study based on their heightened ability to identify dog breeds purely by appearance⁹³—were asked to visually identify the predominant breed of 20 mixed-breed dogs.⁹⁴ Of the 20 dogs, participants could only identify *one* of the underlying genetic breeds of just six dogs with 50 percent or more accuracy.⁹⁵ When narrowed to identification of the predominant breed, only four dogs were identified with 50 percent or more accuracy.⁹⁶ These results are demonstrative of the imprecision of visual dog-breed identification, even among those routinely exposed to various breeds.⁹⁷

The odds of correct visual identification by nonprofessionals then, as mandated by certain ordinances and statutes, seem even worse: “Dogs visually identified as ‘pit bull’ are the 5th most popular family dog in Iowa (and in the top 10 in 46 states), so unfortunately many innocent dogs and their owners are unfairly targeted through BSL.”⁹⁸ Such an unreliable system of enforcing a law under which citizens’ beloved pets are at stake must be reformed.

90. *See id.*

91. Schiavone, *supra* note 6, at 53–54.

92. *See* Voith et al., *supra* note 89, at 24.

93. *Id.* at 18 (noting the use of participants who work for veterinary groups, animal control services, sheltering agencies, and dog clubs).

94. *Id.* at 19.

95. *Id.* at 23.

96. *Id.*

97. *See id.*

98. *Des Moines BSL*, ANIMAL RESCUE LEAGUE IOWA, INC., <https://www.arl-iowa.org/community/des-moines-bsl/> (last visited Sept. 30, 2018).

*C. The Public Safety Rationale: Sounds Great in Theory, Falls Flat
in Practice*

Despite the false sense of security citizens may be lulled into when BSL is enacted in their communities, studies and statistics do not demonstrate that BSL makes any meaningful contribution to public safety. Thousands of dogs have been seized and euthanized in the Denver, Colorado area pursuant to a 1989 pit bull ban.⁹⁹ However, Denver County continues to have significantly higher dog bite-related hospitalization rates than other counties.¹⁰⁰ Between 1995 and 2006, the city of Denver had almost six times as many dog bite-related hospitalizations as Boulder, Colorado, a city with breed-neutral dangerous dog laws.¹⁰¹

In addition to failing to decrease dog bites, Denver's BSL has forced its residents to subvert the law in order to remain living in their municipality of choice.¹⁰² Faced with the threat of destruction, many Denver citizens have opted to hide their pit bulls indoors, cross municipal boundary lines to walk their dogs, and join forces with other owners in an "underground railroad" to protect their pets.¹⁰³ Secondly, when pit bulls are not "available" for ownership within a community, those individuals who seek out pit bulls for criminal purposes based on their perceived menacing nature find other breeds to effectuate their goals.¹⁰⁴

D. Negligent Owners Left Unchecked

The premise of BSL is that the root cause of problematic canine behavior lies within the genetic makeup of certain breeds of dogs, and the negative impact can be mitigated by focusing on those breeds. However, legislators and other proponents of BSL fail to take into account—or intentionally overlook for the sake of easy legislating—the immense role owners play in dog behavior.¹⁰⁵

99. DENVER, COLO., MUN. CODE art. II, § 8-67(a) (2018); NAT'L CANINE RES. COUNCIL, DENVER'S BREED-SPECIFIC LEGISLATION: BRUTAL, COSTLY, AND INEFFECTIVE 1 (2013), https://le.utah.gov/publicweb/SANPED/PublicWeb/38566/Attachment_1_-_Denver_BSL.pdf.

100. NAT'L CANINE RES. COUNCIL, *supra* note 99, at 1.

101. *See* Vankavage & Schaffner, *supra* note 55, at 16.

102. *See, e.g.*, Nicholas Riccardi, *Denver's Dogged Outlaws*, L.A. TIMES (Aug. 2, 2005), <http://articles.latimes.com/2005/aug/02/nation/na-pitbulls2>.

103. *Id.*

104. Cunningham, *supra* note 25, at 39.

105. Burstein, *supra* note 19, at 323.

Proper socialization of any dog is a key component in its successful interactions with other dogs and humans alike; dogs who are left chained up in backyards without human interaction risk becoming bored, anxious, and aggressive.¹⁰⁶ One study by the *Journal of Animal and Veterinary Advances* investigated the extent to which owner behavior has an impact on dog behavior and aggression and concluded the time an owner spent training and caring for a dog has an inverse correlation to its level of aggressive behavior.¹⁰⁷ So, when an owner abuses, neglects, or otherwise mistreats its dog, the likelihood of that dog acting in a hostile or aggressive manner toward humans and other dogs is not surprising and not entirely the dog's fault. Other human factors, such as failing to spay or neuter dogs and leaving them unsupervised around others, can also increase a dog's chance of attack.¹⁰⁸

Some of these human factors can be boiled down to lack of education on the owner's part; not everyone may know the best ways to care for a dog and prevent outward aggression. Dog owners who buy or adopt a pit bull because they believe it to be actually vicious are the ones who pose the greatest danger.¹⁰⁹ This kind of pit bull owner is highly likely to mistreat the dog in an effort to maintain its status as an overtly aggressive dog.¹¹⁰ Laws that fail to target negligent dog owners are missing a core cause of these aggressive behaviors in the first place.¹¹¹

E. Effects on Low-Income Dog Owners and the Impediment to Socioeconomic Improvement

Beyond the obvious discrimination faced by certain breeds of dogs and their owners, BSL has a secondary disparate impact on the poor. Prejudice about the sort of person who owns a pit bull may play an implicit role in BSL.¹¹² Pit bulls have historically been pegged as the dog of lower socioeconomic classes, due in part to the truism that inhabitants of crowded, urban areas underserved by police authority often seek alternative forms

106. See DELISE, *supra* note 21, at 162–63.

107. See Joaquín Pérez-Guisado & Andrés Muñoz-Serrano, *Factors Linked to Dominance Aggression in Dogs*, 8 J. ANIMAL VETERINARY ADVANCES 336, 339–41 (2009).

108. Medlin, *supra* note 22, at 1312.

109. See *id.* at 1311.

110. *Id.* at 1310–11.

111. See *id.* at 1307–08.

112. Swann, *supra* note 11, at 865.

of personal protection in the form of dogs.¹¹³ When the focus of legislative debate inevitably turns to the “irresponsible ownership” of pit bulls, it is not difficult to imagine that racial and socioeconomic stereotypes may influence legislation. Some critics of BSL even suggest that BSL rationales may be entirely unrelated to the dogs themselves¹¹⁴: “They may instead be proxies by which uneasy majorities can register their suspicions about the race, class and ethnicity of the people who own those dogs.”¹¹⁵

Discriminatory intent or not, the cost of complying with this type of legislation has an unduly severe impact on the poor.¹¹⁶ When BSL is enacted and requires owners to make significant property improvements and pay pricey insurance premiums, low-income dog owners may be forced to rehome or euthanize their pets.¹¹⁷ When a low-income citizen’s dog is taken away, that citizen is unlikely to have the money to fight the seizure in court.¹¹⁸

The relationship between pit bull ownership and socioeconomic status is not limited to the poor, however. When a family of any means decides to keep a pet rather than euthanize or rehome it, the inability to obtain homeowner’s insurance, as described in Part III.A, is a roadblock to purchasing a house and improving one’s living conditions.¹¹⁹ Citizens should not have to sacrifice the social utility of a family pet and the often deep connection accompanying pet ownership when scientific evidence does not mandate it.

113. *Id.* at 864. This author also suggests the link between pit bulls and certain racial groups is due to the frequent use of pit bulls in music videos by artists such as Jay-Z and DMX who represent “gangster culture.” *Id.* at 865–66.

114. Radley Balko, Opinion, *The Dirty Secret Behind Banning Certain Dog Breeds*, WASH. POST (Oct. 26, 2016), https://www.washingtonpost.com/news/the-watch/wp/2016/10/26/the-dirty-secret-behind-banning-certain-dog-breeds/?utm_term=.f29f3d41e830.

115. *Id.* (noting that data shows BSL is more likely to pass in urban areas that have undergone a rapid demographic change).

116. Schiavone, *supra* note 6, at 75.

117. *Id.*

118. *Id.*

119. See Cunningham, *supra* note 25, at 5 (“Homeowners’ insurance is the gatekeeper to homeownership. Without homeowners’ insurance, a buyer cannot get a mortgage. For most Americans, if a person cannot obtain a mortgage, he cannot buy a home.”).

IV. CONSTITUTIONAL CHALLENGES TO BREED-SPECIFIC LEGISLATION FALL SHORT

The enactment of BSL has historically been viewed as a legitimate exercise of state and municipal police power to protect the health and safety of its citizenry, but like any other legislative act, these laws are subject to the limitations of state and federal constitutions. The constitutional provisions most frequently cited by dog owners in BSL claims are the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the U.S. Constitution.¹²⁰ Despite the breadth and creativity of these claims, almost all have failed.¹²¹ Citizens have begun—and should continue—to turn to legislative preemption and reform, rather than judicial remedy, as a means of accomplishing change.¹²²

A. *Substantive Due Process*

The body of case law behind the Fourteenth Amendment permits statutes to come under fire for unconstitutionality if the classification sought by the statute does not bear a rational relation to a legitimate state interest.¹²³ This mere rationality review could be replaced with a heightened standard of scrutiny, which mandates the statute be “narrowly tailored to serve a compelling state interest” if the court were to find a fundamental right is implicated or a suspect class is involved.¹²⁴ However, even in the most dog-friendly jurisdictions, courts have held that the right to dog ownership is not a fundamental right nor are dog owners part of a suspect class; thus, rationality review is appropriate.¹²⁵

120. See Marmer, *supra* note 34, at 1067; see also *infra* Parts IV.A–IV.C.

121. Joan E. Schaffner, *The Constitutionality of Breed-Specific Legislation: A Summary*, in A LAWYER’S GUIDE TO DANGEROUS DOG ISSUES, *supra* note 55, at 25, 34. The single instance of BSL being held unconstitutional through the duration of the appeals process is the case of *American Dog Owners Ass’n v. City of Lynn*, 533 N.E.2d 642, 646 (Mass. 1989). In *American Dog Owners Ass’n*, the Supreme Judicial Court of Massachusetts declared an ordinance that restricted possession of pit bulls without providing an objective standard with which to identify the dogs subject to the provision as unconstitutional on vagueness grounds. *Id.* at 646–47.

122. See *infra* Part V.B.i.

123. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439–40 (1985); see also *Heller v. Doe*, 509 U.S. 312, 319–20 (1993).

124. *Reno v. Flores*, 507 U.S. 292, 301–02 (1993).

125. See *City of Toledo v. Tellings*, No. L-04-1224, 2006 WL 513946, at *1 (Ohio Ct. App. Mar. 3, 2006), *rev’d*, 871 N.E.2d 1152 (Ohio 2007).

The plaintiff in *City of Toledo v. Tellings* used the principle of substantive due process to attack a portion of the Toledo Municipal Code limiting the number of pit bulls—classified as “vicious dogs”—allowed to be possessed by its residents.¹²⁶ Tellings, the plaintiff, owned three pit bulls with no history of aggression or other unlawful behavior, but the code section in question mandated residents be limited to only one “vicious” dog.¹²⁷ In this statutory challenge under the U.S. Constitution, the court of appeals acknowledged that no doubt exists as to the legitimacy of the state’s interest in protecting the public but ultimately held targeting specific breeds like pit bulls is arbitrary and, accordingly, unconstitutional.¹²⁸

In so holding, the court of appeals relied on extensive expert testimony at the trial court level leading to the conclusion that pit bulls, as a breed, are not inherently more dangerous than any other breed of dog.¹²⁹ Much of the testimony proffered with respect to pit bull aggression was based on “bare statistics [of dog breeds involved with human fatalities], without reference to the total numbers of dogs in each breed population.”¹³⁰ Correctly discounting any relation between regulating an inherently nonaggressive breed of dog and a legitimate state interest, the court reasoned that the true problem lies with “misconduct or negligence” on the part of the dog’s owner.¹³¹

Despite the reasoned analysis of the appellate court, the Supreme Court of Ohio reversed, holding the ordinance constitutional.¹³² The supreme court did not refute the trial court’s finding that pit bulls do not bite any more frequently than other dog breeds but held that this finding does not automatically affect the legitimacy of these statutes in light of their purpose of protecting the public.¹³³ The court ignored the modern statistics contemplated by the appellate court and showed no deference to the notion

126. *See id.*

127. *Id.*

128. *Id.* at *11.

129. *Id.* The range of experts who testified for the plaintiff at trial included experts in behavior and training of pit bull terriers, members of state dog-law revision committees, dog behavior counselors, evaluators for municipal dog wardens, and dog breeders. *Id.* at *1–2.

130. *Id.* at *4.

131. *Id.* at *11.

132. *City of Toledo v. Tellings*, 871 N.E.2d 1152, 1158–59 (Ohio 2007), *rev’g* No. L-04-1224, 2006 WL 513946 (Ohio Ct. App. Mar. 3, 2006).

133. *Id.* at 1157–58.

that reckless or negligent ownership is a considerable factor in most cases of dog aggression.¹³⁴ *Tellings* is an unfortunately accurate representation of most litigation centered on BSL, and the statutes at issue will almost always be deemed a legitimate exercise of police power under substantive due process analysis.¹³⁵

B. Equal Protection

Substantive due process and equal protection claims frequently go hand-in-hand in BSL challenges, and these constitutional challenges suffer from many of the same jurisprudential ailments. Like substantive due process analysis, courts' tendencies to use rationality review rather than a form of heightened scrutiny is an insurmountable obstacle for BSL plaintiffs pursuing equal protection claims.¹³⁶ Opponents of BSL have argued that this legislation violates the Equal Protection Clause in two ways: it is both underinclusive in that it fails to account for dogs who are not of a specific breed but are actually vicious and overinclusive in that good-natured dogs who are deemed to be pit bulls are unjustly regulated.¹³⁷ The hurdle lies within the principle that "[e]ven if a breed-specific law is proven to be overinclusive or underinclusive, it is not necessarily unconstitutional."¹³⁸ As with the substantive due process argument in *Tellings*, the Ohio Supreme Court ultimately rejected the plaintiff's Equal Protection argument on the grounds that Toledo's BSL was rationally related to a legitimate government interest and was thus constitutional.¹³⁹

Vanater v. Village of South Point, a case in which the plaintiffs made underinclusiveness and overbreadth challenges, also demonstrates the

134. See *id.*; see also Schaffner, *supra* note 121, at 33.

135. See, e.g., Burstein, *supra* note 19, at 318.

136. See *Vanater v. Village of South Point*, 717 F. Supp. 1236, 1242–43 (S.D. Ohio 1989); *Colo. Dog Fanciers, Inc. v. City & County of Denver*, 820 P.2d 644, 650–54 (Colo. 1991). Both courts determined that dog ownership is not a fundamental right guaranteed by the federal Constitution; nor do laws targeting dogs based upon breed result in a suspect class similar to analogous laws targeting citizens based upon race. *Vanater*, 717 F. Supp. at 1242; *Colo. Dog Fanciers, Inc.*, 820 P.2d at 652–53.

137. Burstein, *supra* note 19, at 319. Some BSL critics contend that if the Constitution applied to dogs, BSL would undoubtedly be facially unconstitutional under an Equal Protection analysis. Interview with Benjamin Bergmann, Partner, Parrish Kruidenier Law Firm, in Des Moines, Iowa (Jan. 4, 2017).

138. Burstein, *supra* note 19, at 320.

139. *City of Toledo v. Tellings*, 871 N.E.2d 1152, 1158–59 (Ohio 2007), *rev'g* No. L-04-1224, 2006 WL 513946 (Ohio Ct. App. Mar. 3, 2006).

reasoning courts generally employ when rejecting equal protection claims. The municipality in this case enacted an ordinance that prohibited pit bull ownership, which the plaintiff dog owners challenged on several constitutional grounds.¹⁴⁰ The brunt of the plaintiffs' equal protection argument was that the ordinance "irrationally distinguish[ed] between Pit Bulls and other breeds of dogs and that it fail[ed] to include other specific breeds of dogs which could be grouped into the dangerous Pit Bull category."¹⁴¹ The court for the Southern District of Ohio, in rejecting the underinclusiveness challenge, relied on the distinction that equal protection guarantees uniformity in the treatment of all pit bull owners, not uniformity in the treatment of all dog owners.¹⁴² In an even more succinct response to the overbreadth challenge, the court held, "While identification of a Pit Bull may be difficult in some situations, there are other methods to determine with sufficient certainty whether a dog is a Pit Bull within the meaning of the Ordinance"¹⁴³ In other words, "other methods"—referring to expert testimony by a licensed veterinarian—can mitigate the many problems underlying visual identification.¹⁴⁴ As explained in Part III.B, visual identification is largely inaccurate even among trained professionals due to the increasing number of mixed breed dogs and the varying phenotypical expressions of underlying genetic traits.¹⁴⁵

C. Procedural Due Process

Procedural due process claims arise out of an individual's deprivation of a significant life, liberty, or property interest without being provided the minimal requirements of notice and hearing as guaranteed by the Due Process Clauses of the Fifth and Fourteenth Amendments.¹⁴⁶ *Tellings* once again illuminates the common-sense analysis employed by the Ohio Court of Appeals and the eventual overturning by the Ohio Supreme Court.

In *Tellings*, the statute in question provided no opportunity for an

140. *Vanater*, 717 F. Supp. at 1241–46. The plaintiffs also claimed, unsuccessfully, that the ordinance was unconstitutionally vague. *Id.* at 1243–44.

141. *Id.* at 1245.

142. *Id.*

143. *Id.* at 1246.

144. *See id.* In addressing the overbreadth challenge, the court refers to its own logic in rejecting the vagueness challenge earlier in the opinion, which explains that a licensed veterinarian can identify the breed of a dog in "most, if not all cases." *Id.* at 1244.

145. *See supra* Part III.B; *see also* Voith et al., *supra* note 89, at 24.

146. *Due Process*, BLACK'S LAW DICTIONARY (8th ed. 2004).

owner to challenge the classification of a dog as a pit bull before being found in violation and sanctioned.¹⁴⁷ In his argument, Tellings relied on precedent set forth in *State v. Cowan*, a case in which the Ohio Supreme Court held that prior to being charged with a crime, owners must be notified of a determination that their dog is vicious and provided with an opportunity to contest the label.¹⁴⁸ The appellate court found merit in this straightforward precedential argument: “The *Cowan* [sic] court’s reasoning was based upon the defendant’s inability to challenge the initial finding In the present case, when appellant’s dogs were classified as ‘vicious,’ he also had no opportunity to challenge that finding”¹⁴⁹ Yet, the Ohio Supreme Court ultimately disagreed and distinguished seemingly identical constitutional arguments.¹⁵⁰ The reasoning behind the distinction was that the dog in *Cowan* was labeled as *vicious* because it had caused injury to a person, while the dog in *Tellings* was preemptively deemed vicious by the General Assembly, and thus Mr. Tellings had proper procedural notice stemming from the clear statutory language.¹⁵¹ As with its substantive due process holding, the Ohio Supreme Court ignored modern scientific research in assuming the classification and identification of a dog’s breed is objective—rather than largely subjective—and determined that a vague statute, rather than any approximation of a predisposition hearing, satisfies constitutional requirements.¹⁵²

V. EFFORTS TO REVERSE OR AMEND BREED-SPECIFIC LEGISLATION

In addition to private citizens attacking these ordinances through constitutional and other challenges, state lawmaking bodies have begun to pay attention to public opposition and the scientific studies which routinely label BSL as “inappropriate and ineffective.”¹⁵³ The process is unfolding rather slowly, but the anti-BSL movement is gaining traction nationally and within Iowa’s communities.

147. See *City of Toledo v. Tellings*, No. L-04-1224, 2006 WL 513946, at *7 (Ohio Ct. App. Mar. 3, 2006), *rev’d*, 871 N.E.2d 1152 (Ohio 2007).

148. *Id.* at *6–7.

149. *Id.* at *7.

150. See *City of Toledo v. Tellings*, 871 N.E.2d 1152, 1158 (Ohio 2007), *rev’g* No. L-04-1224, 2006 WL 513946 (Ohio Ct. App. Mar. 3, 2006).

151. *Id.*

152. Schaffner, *supra* note 121, at 31.

153. Veterinary Med. Ass’n Task Force on Canine Aggression & Human–Canine Interactions, *A Community Approach to Dog Bite Prevention*, 218 J. AM. VETERINARY MED. ASS’N 1732, 1736 (2001).

A. Nationwide

While BSL continues to have a presence at the municipal level, 20 states have preempted it at the state level.¹⁵⁴ Minnesota, California, Illinois, and New York are among the states that have recognized that categorically banning a breed of dog is not effective or efficient legislation.¹⁵⁵ These states, however, still understand the need for regulation of dangerous dogs in a way that does not discriminate against specific breeds.¹⁵⁶

In many parts of the nation, incremental municipal change has led to statewide reform. Before Ohio Governor John Kasich signed HB-14 into law in 2012—removing pit bulls from the statutory definition of vicious¹⁵⁷—both Cincinnati and Cleveland repealed or replaced their municipal BSL.¹⁵⁸ Cincinnati's amendment was similar to the eventual state-level change, completely removing any breed reference from the definition of vicious in its municipal code.¹⁵⁹ Ownership of pit bulls within the city was finally permitted since the ban began in 2003.¹⁶⁰

Cleveland, however, replaced its BSL entirely with behavior-based classifications.¹⁶¹ After the change, threat dogs fell into one of two categories, Level I (Dangerous) or Level II (Vicious), based on behavioral factors such as frequency of attacks and severity of injuries caused.¹⁶² Clarifying the rationale behind this decision, Cleveland Councilman Matt Zone explained, "The breed of a dog is not an indicator of its personality. Any dog who is poorly trained and neglected can be vicious and a threat to our community.

154. HUMANE SOC'Y, *supra* note 40, at 11; *see, e.g.*, ARIZ. REV. STAT. ANN. § 9-499.04(C) (2018); ME. REV. STAT. ANN. tit. 7, § 3950 (2018).

155. CAL. FOOD & AGRIC. CODE § 31683 (West 2018); 510 ILL. COMP. STAT. ANN. 5/15(a)(3) (West 2018); MINN. STAT. ANN. § 347.51(8) (West 2018); N.Y. AGRIC. & MKTS. LAW § 107(5) (McKinney 2018).

156. FLA. STAT. ANN. § 767.14 (West 2018) (stating municipalities can regulate dogs "provided that no such regulation is specific to breed"); *see also* MINN. STAT. ANN. § 347.51(8) (West 2018).

157. OHIO REV. CODE ANN. § 955.11(A)(6)(a) (2018); OHIO REV. CODE ANN. § 955.11(4)(a)(iii) (2011) (repealed 2012).

158. *See infra* notes 159–64.

159. *See, e.g.*, CINCINNATI, OHIO, MUN. CODE § 701-1-V (2018).

160. Hannah McCartney, *Cincinnati Pit Bull Ban Repealed*, CITYBEAT (May 16, 2012), <http://www.citybeat.com/home/blog/13034482/cincinnati-pit-bull-ban-repealed>.

161. *From Breed to Behavior: Cleveland City Council Revises Vicious Dog Ordinance*, CLEVELAND19 NEWS (June 7, 2011), <http://www.cleveland19.com/story/14850358/cleveland-city-council-revises-vicious-dog-ordinance/>.

162. *Id.*

These revisions shift the focus from the type of dog to its behavior and neglectful actions of its owner.”¹⁶³ Additionally, dogs whose actions put them into one of these categories may be released of their classification upon a period of time without incident and completion of behavioral training, such as obedience class.¹⁶⁴

In an effort to address its citizens’ public safety, many states and cities are opting to enact legislation similar to Cleveland’s, known as dangerous dog laws.¹⁶⁵ Dangerous dog laws shift the negative consequences of violation to owners, whose actions can be controlled by the law, rather than attempting to regulate the dogs themselves as is done with BSL.¹⁶⁶ The best remedy in many dog bite cases is often prevention, and several jurisdictions have enacted laws that proscribe ownership of any breed of dog by certain high-risk citizens, including convicted felons¹⁶⁷ and repeat animal abusers.¹⁶⁸

Beyond the policy implications, a major reason states are beginning to repeal BSL or replace it with breed-neutral legislation is the harsh economic reality of enforcing arbitrary laws.¹⁶⁹ BSL-related costs such as animal control, enforcement, DNA testing, euthanasia, and litigation from citizens contesting BSL add up to a significant burden on taxpayers.¹⁷⁰ In 1997, a task force in Prince George’s County, Maryland, found previously enacted breed-specific laws were “inefficient, costly, difficult to enforce, subjective and questionable in results” and recommended the laws be repealed.¹⁷¹ Based on the current pit bull population and the average costs associated with BSL, one study estimates a national breed-specific law would cost U.S. taxpayers close to \$500 million annually to enforce.¹⁷²

163. *Id.*

164. CLEVELAND, OHIO, CODE OF ORDINANCES § 604.06(c) (2018).

165. Hussain, *supra* note 15, at 2854–55.

166. Vankavage & Schaffner, *supra* note 55, at 18–20.

167. *See, e.g.*, 720 ILL. COMP. STAT. ANN. 5/12-36 (West 2018).

168. *See, e.g.*, ST. PAUL, MINN., CODE OF ORDINANCES § 200.02(d) (2018).

169. Hussain, *supra* note 15, at 2871–72.

170. *Id.*

171. AM. BAR ASS’N, RESOLUTION 100, at 3 (2012), https://www.americanbar.org/content/dam/aba/administrative/mental_physical_disability/Resolution_100.authcheckdam.pdf.

172. JOHN DUNHAM & ASSOCS., INC., THE FISCAL IMPACT OF BREED DISCRIMINATORY LEGISLATION IN THE UNITED STATES 2 (2012), <http://bestfriends.guerrillaeconomics.net/assets/site/res/best%20friends%20methodology%20and%20write%20up.pdf>.

Various interest groups and government agencies have advocated for alternatives to BSL, including the American Bar Association,¹⁷³ American Kennel Club,¹⁷⁴ Centers for Disease Control,¹⁷⁵ and the National Canine Research Council.¹⁷⁶ The U.S. Department of Justice has taken an anti-BSL stance in mandating that service dogs be granted access to public facilities, regardless of their breed, even in jurisdictions with heightened restrictions and outright bans.¹⁷⁷ Opposition to BSL has even garnered support from the Executive Branch.¹⁷⁸

B. A Grassroots Campaign—How Iowa’s Residents Are Making a Difference

This national trend of fighting laws targeting certain breeds is alive and well in Iowa’s communities.¹⁷⁹ BSL is being challenged at the municipal level by citizens in Muscatine and Britt.¹⁸⁰ Des Moines is now one of very few cities

173. AM. BAR ASS’N, *supra* note 171, at 1 (“[T]he American Bar Association urges all state, territorial, and local legislative bodies and governmental agencies to adopt comprehensive breed-neutral dangerous dog/reckless owner laws . . . and to repeal any breed discriminatory or breed specific provisions.”).

174. AM. KENNEL CLUB, CANINE LEGISLATION POSITION STATEMENTS: “DANGEROUS DOG” CONTROL LEGISLATION 1 (2017), http://cdn.akc.org/Government_Relations/Dangerous_Dogs_2017.pdf (“The American Kennel Club strongly opposes any legislation that determines a dog to be ‘dangerous’ based on specific breeds or phenotypic classes of dogs.”).

175. *See* Sacks, Sattin & Bonzo, *supra* note 29, at 1492 (suggesting laws encouraging “responsible dog ownership” would be instrumental in reducing attacks by dogs).

176. SUSAN HUNTER & RICHARD A. BRISBIN, JR., PET POLITICS: THE POLITICAL AND LEGAL LIVES OF CATS, DOGS, AND HORSES IN CANADA AND THE UNITED STATES 339 (Alan M. Beck & Marguerite E. O’Haire eds., 2016).

177. HUMANE SOC’Y, *supra* note 40, at 9.

178. HUNTER & BRISBIN, JR., *supra* note 176, at 339 (“We don’t support breed-specific legislation—research shows that bans on certain types of dogs are largely ineffective and often a waste of public resources.”).

179. *See, e.g., Dog Attacks: Iowa Communities Leaning Away from Breed-Specific Legislation*, CEDAR RAPIDS GAZETTE (Oct. 17, 2013), <https://www.thegazette.com/2013/10/17/dog-attacks-more-iowa-communities-leaning-away-from-breed-specific-legislation>.

180. *See* Kevin M. Smith, *Muscatine Couple Fights Pit Bull Ban*, MUSCATINE J. (Jan. 15, 2016), https://muscatinejournal.com/news/local/muscatine/muscatine-couple-fights-pit-bull-ban/article_f054309c-4a4b-587e-bbac-f3001e3ea8d3.html; *see also* Rae Yost, *Britt Council Delays Ban on Pit Bull Breed in City*, GLOBE GAZETTE (Aug. 2, 2016), https://globegazette.com/news/local/britt-council-delays-ban-on-pit-bull-breed-in-city/article_46f58a3b-26d2-53d6-8437-df6ea77cb5dc.html.

in Polk County to have BSL, and citizens are pushing back against it.¹⁸¹

In recent years, many programs in the central Iowa area have been developed to combat BSL and help reverse the stigma plaguing pit bulls. The Animal Rescue League Pit Crew Club was formed as a way for owners, whose dogs are subject to Des Moines's current breed-specific ordinance, to show the pride they feel as pit bull owners.¹⁸² Respons-I-Bull, an adoption campaign, uses photography to highlight local owners and their pets who have done an exemplary job of demonstrating conscientious dog ownership.¹⁸³ Neighborhood groups in the Des Moines area, such as Des Moines Neighbors, have taken positive first steps in achieving change by voting to change breed-specific laws to breed-neutral ones.¹⁸⁴

One central Iowa pit bull owner and animal welfare advocate, Stephanie Filer, has had a considerable amount of success in bringing the inequalities of BSL to light and working with local communities to correct them. Filer, who works as the manager of Special Gifts & Partnerships for the Animal Rescue League of Iowa, has used her knowledge of pit bulls and the BSL movement to educate municipal lawmakers in cities such as Chariton, Altoona, and Randall, Iowa.¹⁸⁵

After watching a news story about a Chariton woman whose family dog had to leave the city simply because it looked like a pit bull, Filer contacted the city council to see if she could help its members accomplish their purported goal of pet safety without unfairly punishing this family—and many others—whose dogs have done nothing wrong.¹⁸⁶ Through correspondence with the city council, she discovered the town did have an issue with dogs frequently biting people, but most of the offending dogs were Labrador retrievers.¹⁸⁷ Accepting an invitation to Chariton's next council meeting, Filer presented her ideas about shifting the ordinances from breed-

181. *See infra* notes 182–206.

182. *Education, Advocacy, Action: How Iowa Is Defeating BSL*, ANIMAL FARM FOUND. (Feb. 4, 2013), <https://animalfarmfoundation.blog/2013/02/04/fighting-bsl-in-iowa/>.

183. *Id.*

184. MacKenzie Elmer, *D.M. Votes to Change Pit Bull Language to 'High Risk'*, DES MOINES REG. (Feb. 9, 2018), <http://www.desmoinesregister.com/story/news/crime-and-courts/2015/02/09/des-moines-pit-bull-law-ineffective-arl-chief-says/23130593/>.

185. E-mail from Stephanie Filer, Manager of Special Gifts & P'ships, Animal Rescue League of Iowa, to Author (Jan. 18, 2017, 08:55 CST) (on file with author).

186. *Id.*

187. *Id.*

specific ones to behavior-based ones, and the council eventually amended the relevant chapters of the municipal code to omit mention of breed and added provisions addressing individual canine behavior.¹⁸⁸ Filer has also had success changing laws in Altoona, Iowa—one of Des Moines’s growing suburbs.¹⁸⁹

In addition to targeting municipal lawmaking bodies, Filer has been involved in many public relations campaigns aimed at quashing the negative stereotypes often associated with pit bulls. In 2012, Filer spearheaded a campaign to remove a McDonald’s radio commercial from the air, which claimed eating a Chicken McBite was “less risky than petting a stray pit bull, shaving your head, naming your son Sue or giving friends your Facebook password.”¹⁹⁰ McDonald’s realized it had erred in insinuating that stray pit bulls are categorically unsafe, apologized via Twitter, and eventually pulled the advertisement.¹⁹¹

Currently, the outlook of repealing Des Moines’s BSL is not extremely hopeful.¹⁹² Des Moines City Councilmember Bill Gray acknowledges any dog can become aggressive if mistreated or trained to act that way, but he does not believe enough evidence exists to repeal or replace Des Moines’s current BSL.¹⁹³ Gray has received comments from his constituents on both sides of the matter—a majority are from those wanting to repeal Des Moines’s BSL—but says he is unlikely to change his mind, even as the state and national trend against BSL strengthens.¹⁹⁴ Des Moines City Councilmember Linda Westergaard, without further comment, indicated she is not open to changing the breed-specific language of the ordinance,

188. *Id.* Chariton, Iowa, Municipal Code Chapter 8.12, 1988 provisions pertaining to pit bull dogs, was repealed by Ordinance Number 892, § 4. Additionally, Ordinance Number 892, § 3 amended previous provisions regarding animals “vicious in nature” and adopted behavior-based restrictions as currently set forth in Chariton, Iowa, Municipal Code Chapter 8.08.

189. E-mail from Stephanie Filer, *supra* note 185; Reid Chandler, *Official Changing Dangerous Dog Ordinance in Altoona*, WHOTV.COM (Sept. 2, 2014), <http://whotv.com/2014/09/02/officials-changing-dangerous-dog-ordinance-in-altoona/>.

190. *McDonalds Pulls Ad After Dog Owners Protest*, FIRSTPOST (Feb. 7, 2012), <https://www.firstpost.com/world/mcdonalds-pulls-ad-after-pit-bull-owners-protest-205527.html>.

191. *Id.*

192. See Telephone Interview with Bill Gray, Representative for Ward I, Des Moines City Council (Mar. 10, 2017).

193. *Id.*

194. *Id.*; see also *Des Moines BSL*, *supra* note 98.

either.¹⁹⁵ While these attitudes may reveal a current stagnancy in realizing municipal legislative reform, the fact that a majority of the BSL-related constituent pleas are to eliminate it, rather than leave it, is indicative of the strength of the effort.¹⁹⁶ Additionally, Gray notes that he would “never say never” when it comes to making local ordinances more effective.¹⁹⁷

VI. PROPOSAL FOR IOWA COMMUNITIES

In light of the numerous deficiencies of BSL and the many examples of successful alternatives around the country, it is imperative for Iowa to abandon the idea that a categorical ban or restriction of one type of dog based on unsupportable stereotypes is fair, effective legislation.¹⁹⁸ The shift should be toward breed-neutral laws focusing on holding reckless owners accountable for individually aggressive dogs: “Such laws will not only prevent dog bites, but will avoid discrimination against innocent dogs—and their owners—based upon unreasonable societal prejudice, driven by the media, and founded solely upon an ignorant stereotype.”¹⁹⁹

With this ideal in mind, the most comprehensive way to effect change would be for the Iowa legislature to adopt a statewide law prohibiting municipalities from enacting BSL, similar to that of Minnesota.²⁰⁰ Iowa Code § 351.41, regarding dogs and other animals, currently reads:

This chapter does not limit the power of any city or county to prohibit dogs and other animals from running at large, whether or not they have been vaccinated for rabies, and does not limit the power of any city or county to provide additional measures for the restriction of dogs and other animals for the control of rabies and for other purposes.²⁰¹

Instead of this seemingly limitless power afforded to municipalities to regulate based on breed, a proffered addition might read: No city, county, or other municipality shall “adopt an ordinance regulating dangerous or potentially dangerous dogs based solely on the specific breed of the dog.

195. E-mail from Linda Westergaard, Representative for Ward II, Des Moines City Council, to Author (Mar. 8, 2017, 19:36 CST) (on file with author).

196. See Telephone Interview with Bill Gray, *supra* note 192.

197. *Id.*

198. See discussion *supra* Parts III, VI.

199. Burstein, *supra* note 19, at 327.

200. See MINN. STAT. ANN. § 347.51(8) (West 2018).

201. IOWA CODE § 351.41 (2017).

Ordinances inconsistent with this subdivision are void.”²⁰² This addition still provides cities and towns with ample latitude in crafting dangerous dog laws to suit the needs of their citizens²⁰³ while avoiding the traps of BSL.²⁰⁴ Notorious for its unsympathetic attitudes and laws governing animal welfare, a change this simple and straightforward would be a significant step forward for Iowa’s human and canine residents alike.²⁰⁵

A statewide prohibition of breed-based classification would be the most efficient and effective way of mending BSL, but most statehouses—Iowa’s included—are not pillars of bipartisan expediency. Taking into account the time-consuming nature of state legislation, the next best way to bring about this much-needed change would be by focusing on individual action and community education.²⁰⁶ Stephanie Filer’s outreach is a prime example of how citizens of Des Moines and other Iowa communities can make an actual difference simply by reaching out and educating communities that are seeking change but are unsure of how to realize it.²⁰⁷ Citizens can fix out-of-touch breed-based laws by talking with local elected officials, familiarizing themselves with the ordinances they are targeting for change, sending letters to editors of local newspapers, and attending public council meetings. Every effort counts in guiding lawmaking bodies toward breed-neutral dog policy and a safer future.

If legislatures and city councils insist on maintaining and enforcing BSL, the means by which it is enforced must be reformed.²⁰⁸ As addressed in Part III.B, any law which purports to distinguish dogs by breed should, in practice, base its distinctions on genetic testing rather than visual identification.²⁰⁹ Whether the dogs appropriately targeted would conform to a lawmaking body’s intention is highly questionable, and it is up to courts to ensure these kinds of laws are in fact rationally related to a legitimate state interest.²¹⁰

202. MINN. STAT. ANN. § 347.51(8).

203. See Burstein, *supra* note 19, at 327.

204. See discussion *supra* Parts III, VI.

205. See Burstein, *supra* note 19, at 327.

206. See discussion *supra* Part V.B.

207. See E-mail from Stephanie Filer, *supra* note 185.

208. See discussion *supra* Part III.B.

209. See discussion *supra* Part III.B.

210. See discussion *supra* Part IV.A.

VII. CONCLUSION

A legislature's mission to protect society from the harms which might corrode it is undoubtedly an important one. But when the utility of a quick fix is outweighed by its harm to citizens, it is necessary to take a step back. Although masked as a well-intentioned law, Iowa's quick-fix municipal BSL does not help to curb the dog-bite epidemic and, indeed, punishes perfectly behaved dogs and responsible owners while failing to discipline the true offenders. In addition to the primary policy implications of Part III, the economic and employment opportunities of Iowa's residents are restricted by these ordinances. Families are limited in their ability to relocate, and those who are forced to relocate may have limited access to animal wellness and veterinary services. Science, common sense, and compassion unite on this subject: Make Iowa's breed laws fair for all.

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* B.A., University of Iowa, 2013; J.D., Drake University Law School, 2018. I would like to thank the staffers and editors of the Drake Law Review for their diligent work, and I would like to especially thank and recognize Stephanie Filer for her supreme knowledge of and commitment to this cause.